# FINAL REPORT ON THE PUBLIC CONSULTATIONS

# ORGANIZATIONAL REVIEW OF THE NOVA SCOTIA HUMAN RIGHTS COMMISSION

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# FINAL REPORT ON THE PUBLIC CONSULTATIONS

## ORGANIZATIONAL REVIEW OF THE NOVA SCOTIA HUMAN RIGHTS COMMISSION

## *INTRODUCTION*

This report on public consultations is part of an organizational review of the Nova Scotia Human Rights Commission (NSHRC) which the Commission itself initiated in the summer of the year 2000. The consultation phase follows the preparation of a discussion paper, "Moving Forward with Human Rights in Nova Scotia," which summarizes issues and options facing the NSHRC. This paper was used as background documentation for the public consultations and was made available on the NSHRC web site, through public libraries across the Province, and sent out with letters of invitation to participate[1].

Public hearings were held at the locations and times specified in Appendix A. They were conducted by Dr. Wanda Thomas Bernard, Dr. Viola Robinson, and Dr. Fred Wien who chaired the hearing panel. Typically two meetings were held in each community – an afternoon session by invitation to persons and organizations known to have an interest in the work of the Commission, and an evening session advertised in the media as being open to the public. We also met with the Board of the Nova Scotia Disabled Persons Commission.

Two of the three members of the hearing panel attended each session, which began by presenting overheads summarizing the reasons for the organizational review and outlining eight points for discussion (Appendix B). Participants were then asked to make any general comments they wished, followed by more specific observations on each of the points of discussion. Extensive notes of the discussion were taken by hand. On a few occasions, persons attending had prepared written briefs. Apart from the hearings, written submissions were made by an additional eight persons and we also received 14 calls to the Commission's 1-800 number.

While attendance at the hearings was not large – we met with a total of 121 persons in 10 locations – the quality of the discussion was high and some recurring themes quickly became evident. We heard from a wide range of individuals and organizations including

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[1] Praxis Research & Consulting Inc., *Moving Forward With Human Rights In Nova Scotia: A Discussion Paper Presenting issues and Options Identified in Phase I of the Organizational Review of the Nova Scotia Human Rights Commission*, Halifax: Praxis Research & Consulting Inc., 2001.

business and labour as well as equity groups representing women, the disabled, Aboriginal people, and African Nova Scotians. We also heard from lawyers, educators and students, community developers, heads of service organizations and public servants. The process of the consultation itself was not challenged – indeed people welcomed the opportunity to participate -- although they would have liked to have received notice and background documentation further in advance. In addition, in Halifax the point was strongly made that the preparation of the background paper, which in itself involved 41 interviews in the phase prior to the public consultation, did not include any African Nova Scotian lawyers with expertise in equity issues among those interviewed. On occasion, there was also criticism of specific points contained or omitted in the background paper.

Many different views were expressed about the Commission. Given the nature of the exercise, virtually all of them can be characterized as constructive criticism that pointed out ways in which the Commission's work and organization can be improved[2]. Persons often had positive things to say about their experience in working with the Commission on specific initiatives such as public education and working with employers. Specifics aside, there is strong support for the continued existence of the Commission, a point made both explicitly by those who stated that they see the Commission as an essential part of the framework for protecting and advancing human rights in the Province as well as implicitly by those who argued that the Commission should not be merged with other tribunals or agencies.

Almost everyone agreed, however, that the workings of the Commission could be improved and they were particularly concerned about the large backlog of cases that has accumulated since the early 1980's. They were joined by some individuals whose personal complaints to the Commission concerning discrimination were not heard or resolved to their satisfaction and who took advantage of the public hearings to let us know about their discontent.

## *THE COMMISSION'S MANDATE*

The question: What should be the core mandate of the NSHRC, and how should it allocate resources and prioritize activities among its various responsibilities?

At the hearings, we explained that the four major elements of the mandate of the NSHRC were:

- Research and policy development
- Public education and affirmative action

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[2] We received one written submission which suggested that the Commission has fulfilled its mandate and should close. It recommended that human rights issues "should become the property of the individual" and persons with complaints should seek remedy through the courts via the litigation process.

- Investigation and management of complaints
- Adjudication of complaints

In response, we heard that ideally an effective human rights commission pursues all four of these aspects. However, most participants perceived that the NSHRC spends most of its time and resources on the complaints process. They did not perceive very much activity in the areas of research, policy development, public education or affirmative action but they believed that steps taken in these areas would in part help to prevent individual cases from arising.

With respect to research, the comment was made that, at a minimum, the NSHRC should be doing analysis of its case load and if it did not have in-house staff to undertake research then it would be good to develop research partnerships with university-based researchers. Indeed some preferred this latter route on the grounds that it would help to avoid conflicts of interest arising in the conduct of the research.

Public education is strongly favoured, beginning with the early grades at school to teach students about diversity, racism and related matters. It was recommended that the NSHRC also work closely with workplaces, both to educate employers in both the public and the private sector about matters such as hiring practices and building a positive, diverse, working environment, and as a means to reach employees. Education for the general public is also supported, especially to inform the public about its rights and about the various processes that are available in the event that a person wishes to lodge a complaint.

We did not hear a lot about affirmative action, but those who spoke on the matter felt that the present approach could be strengthened and recommended looking at the legislation introduced in 1993 in Ontario, as well as the federal employment equity legislation and other important legal buttresses such as the charter provisions of the Constitution Act, 1982. We also received a written brief, presented during our hearings, that argued that the NSHRC should take positive affirmative action on behalf of children with special needs who need assistance in their struggles to access and fully utilize services such as day care or summer camp. The intervenor goes on to say that there are many examples of systemic discrimination when it comes to children with disabilities

As one intervenor put it, all four mandate areas mentioned above are part of an effective human rights commission and ideally the NSHRC would have the funding so that all of them could be vigorously pursued. If that is not possible, most people in our hearings would retain the priority on the investigation and adjudication of complaints, and would especially urge action on reducing the backlog of cases that has accumulated. It was noted that the core responsibility of the Commission is the protection of human rights as mandated by the Nova Scotia Human Rights Act.

Just how the backlog of cases would be reduced is something that many participants

regarded as a technical problem best addressed by the NSHRC itself, but we did receive a range of suggestions that included streamlining the existing intake, investigation and adjudication process as well as the idea that the Commission urgently needs the resources to address the situation. The backlog was viewed as quite a serious problem for several reasons:

- a backlog of some 200 cases produces a major delay in the processing of individual complaints. We frequently heard the sentiment that it is unconscionable that it takes two or three or four years for a complaint to be processed.

- the backlog plus the addition of new cases each year means that the staff are overburdened, and also diverted from other important activities of the Commission

- perhaps most importantly, the public perception of the time delay has a chilling effect on legitimate cases that might otherwise come forward. People just do not want to sign up for such a lengthy and involved process

- the credibility of the Commission as an effectively functioning institution becomes undermined and people either give up on it or look to other avenues for redress.

If in the short to medium term the priority continues to be tied to the processing of individual cases, then the Commission would be well advised to pursue other aspects of its mandate, such as research and public education, in partnership with other organizations such as universities, the Advisory Council on the Status of Women and the Disabled Persons Commission. In fact, on a couple of occasions, individuals suggested that the provincial Department of Education might take up the public education mandate around human rights, or that the Canadian Human Rights Commission should take over these kinds of functions, or that a new independent body be established at arms length from the government. We will return to specific suggestions around case management below.

The point was also made that the NSHRC should be more visible than it currently is. It should speak out on the important human rights issues of the day, such as the conflict over the Aboriginal fishery or the Acadian school issue in south-west Nova Scotia – not in the sense of taking sides but in the sense of public education and advocacy around the need to respect human rights as these issues are addressed.

To conclude this discussion of the Commission's mandate, we refer briefly to some suggestions that we heard concerning the need to expand the legislated grounds for protection in the Human Rights Act of the Province. This was not a major theme in the hearings, in part because the background document made it clear that it would need to be a topic for another day. In two locations, however, we heard well argued presentations pointing out that children with special needs in such areas as learning, access to summer

camp and so on, require both protection and affirmative action on their behalf. Specifically, it was suggested that the mandate of the NSHRC "... should specifically state that the rights of children with disabilities are among the human rights we are committed to defend." In another location, the point was made that those suffering from brain injuries are also in need of human rights protection. A written submission advocates for adult adoptees and their right, which should be protected, to access their birth records.

In the two Mi'kmaq reserves we visited, we heard about people who believed they were discriminated against on the basis of their family affiliation[3]. And at several stops we heard from workers who had been injured on the job but who were subsequently laid off, could not get their case heard by the Human Rights Commission, were refused coverage by the Workmen's Compensation Board, and were unable to regain employment. A great deal of frustration and bitterness was expressed by those affected, and one had the sense that they had tried every avenue that they could think of but had not found a satisfactory conclusion to their situation.

We also received a written submission that argued that, in addition to having access to the NSHRC, complainants should have the right to have their case heard in the court system, as is the case in Quebec. It was argued that the denial of this avenue disadvantages individuals and groups in pursuit of human rights complaints and is in violation of the Charter of Rights contained in the Constitution Act, 1982,

## *SYSTEMIC DISCRIMINATION*

The question: Does the NSHRC's mandate for legislative and legal action on issues of systemic discrimination need to be clarified or expanded?

The response to this question was somewhat hampered by the fact that many participants were not clear about what systemic discrimination involved or how the NSHRC could address it. Some were hesitant about moving forward in this area, citing the fact that such cases are more complicated and expensive to pursue and again wondering whether the Commission should take on new tasks because of the backlog of individual cases. Others, however, (and these were more numerous) affirmed the desirability of the Commission proceeding. They believed that acting on issues of systemic discrimination would get at the roots of problems of discrimination and inequality, and would have a wider impact than would a preoccupation with responding to individual complaints. The argument was also advanced, but not always accepted, that effective action at the institutional level would help to prevent individual cases from arising in the future.

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[3] Because these instances were located on reserve, it would likely entail modifications to federal rather than provincial human rights legislation, but this issue could well arise in non-Aboriginal communities as well.

Several examples of systemic problems were given. They included the difficulty that women in rural areas have in accessing credit, the alleged failure of the South-west Nova Scotia School Board to implement the recommendations of the Judge Green report in the Digby area, the lack of African Canadians in senior positions in the provincial government, patterns of alleged discrimination in hiring or promotion by particular employers, and complaints made against some Halifax bar owners about their treatment of African Canadian customers.

Suggestions of steps that the NSHRC could take in order to play a stronger role with respect to systemic issues included the need to educate the staff and board of the Commission itself about how to pursue such cases, undertaking research to identify systemic barriers, looking at the experience of other Commissions such as those in Ontario and Saskatchewan, and possibly amending the Nova Scotia Human Rights Act to more clearly mandate action in this area.

## *SHOULD THERE BE A LEAD AGENCY?*

The question: Should there be a lead agency for human rights research and policy development in Nova Scotia, and if so should it be the NSHRC, the Department of Justice, the Law Reform Commission, or some other agency or coalition of agencies?

The answer to this question was mixed and a clear theme did not emerge. Certainly some participants believed that there should be a lead agency, and typically those in favour of the idea nominated the NSHRC as the agency that should take the lead. Others suggested that this is already the situation by virtue of the role of the NSHRC in relation to the Nova Scotia Human Rights Act and by virtue of more than 30 years of experience in this field; the status quo should prevail. Perhaps the most compelling argument in favour of this notion was made by one intervenor who made the analogy to Cancer Care Nova Scotia, an agency that has been designated as the lead agency on an important issue of public concern and which has made a contribution in bringing other agencies and groups together in a coordinated fashion.

However, not everyone is convinced. Those who are against the idea of a lead agency argue that what we need is not hierarchy but rather collaboration. If there is a need for an agency to play a leading role, it should not be one agency on all issues but rather whichever agency or board has the expertise given the subject matter. Thus, on issues of concern to women, it would be the Advisory Council on the Status of Women; on issues affecting the disabled, it would be the Disabled Persons' Commission that would bring the other groups to the table to organize concerted action.

An occasional participant took the point of view that, yes, there should be a lead agency for human rights research and policy development but it should not be the NSHRC.

Rather, it should be an independent agency set up outside of government.

## *OPTIMAL USE OF RESOURCES: COMPLAINT AND APPEAL TRIBUNALS*

The question: What might be the costs and benefits of pooling resources and more closely aligning the activities of the various administrative tribunals and other agencies that handle complaints and appeals in Nova Scotia (the NSHRC, the Ombudsman, the Labour Standards Tribunal, the Public Utilities Board, and the Labour Relations Board)?

The main thrust of the comments we heard on this question was against the idea of combining these disparate organizations in some way. Intervenors spoke about the different mandates of the various boards and tribunals that hear citizen complaints or appeals, and the different kinds of expertise that was required in each of these areas. With respect to the Labour Standards Tribunal and the Labour Relations Board specifically, there was a reluctance to have human rights issues considered in boards that arise from a labour-management context, and concern that cases would be dealt with in a context where employers might have undue influence and where labour has not traditionally been all that receptive to the needs of equity groups.

With respect to the Ombudsman's Office, there was widespread concern expressed about the decision to have the Executive Director of the Human Rights Commission also serve as the Ombudsman for the province. Strong language was used – "totally unacceptable", "we are appalled". The concern is that the Ombudsman's Office has a mandate that covers all government departments and agencies, and it could easily happen that a complaint may arise from within the Human Rights Commission that would ordinarily be heard by the Ombudsman's Office, and vice versa. Thus there would be a conflict of interest if the head of both organizations were the same person. It could also discourage persons from coming forward with their complaints.

The Ombudsman's Office also has a different accountability relationship than the NSHRC. The latter reports to a minister of the government of the day, while the former is accountable to the Legislative Assembly. To make the Ombudsman's Office accountable to the government of the day rather than to the Legislature, if the two were combined, was seen as a regressive step from the point of view having complaint procedures that are independent of the government of the day.

## *OPTIMAL USE OF RESOURCES: HUMAN RIGHTS AND EQUALITY ORGANIZATIONS*

The question: What might be the potential positive and negative impacts of pooling resources and more closely aligning the activities of the various Nova Scotia agencies, boards and commissions with related mandates in the field of equality and human rights, such as the NSHRC, the Advisory Council on the Status of Women, the Disabled Persons Commission, and the Law Reform Commission?

As with the previous question, there is very little support and there would be considerable opposition if the government were contemplating a combining or merger of some or all of these organizations. Intervenors spoke about the different mandates and perspectives of the various boards and commissions – for example, the Advisory Council on the Status of Women, which has a much broader mandate than the Human Rights Commission, which believes that it has a long way to go in achieving that mandate, and which in any event does not deal with individual complaints as the NSHRC does.

We heard that this would be an example of an organization being created that would be bigger but not better, in the sense that there is strong concern about loss of focus on the issues that each currently has the mandate to pursue. The point was frequently raised that issues of race or disability, for example, would get lost or would take second place to other issues in a larger organization.

A general theme running through the discussion on both the above questions was the idea that separate agencies permit the development of expertise and specialization. They allow for the development of different mandates and processes. They give citizens more options, for example to go to a second agency if the first does not or cannot give satisfaction. The point was made that the NSHRC grew out of a particular historical context and that groups such as the African Nova Scotian population rely on the Commission to address issues of racism. This institutional resource should not be taken away, weakened or watered down.

While there is opposition to the idea of a merger, we heard a lot of expressions of support for closer collaboration among agencies where their mandates or interests coincide. There is a strong sense that a voluntary coming together and a sharing of resources around specific initiatives will produce a stronger product without at the same time losing the value of having distinct organizations. Indeed, we were told of instances where collaborative activities already occur, for example between the NSHRC and the Disabled Person's Commission on dealing with harassment in schools. This kind of collaboration can be expanded and should dimensions such as cooperative action, the sharing of information, sharing expertise, and perhaps undertaking some common symposia or workshops for staff.

A number of intervenors also expressed the view that having related organizations sharing contiguous physical space and having common reception/intake staff could be both a more efficient use of resources as well as an encouragement to collaborative action. Related to this is the idea that the various boards and commission that deal with citizen complaints might share a common resource person or advisor who would be the principal point of contact with the public and give accurate, well-informed advice on where a particular complaint should be lodged.

## *PARTNERSHIPS*

The question: What is the scope for building more effective partnerships to advance the mandate of the Nova Scotia Human Rights Commission?

As the above section describes, partnerships and collaboration are deemed to be a good thing, and there was no one at the public hearings who developed a cogent argument opposing the idea of building more effective partnerships. Indeed, it was recognized that a good deal of collaborative activity is already taking place. The main candidates for expanding partnership relations with the NSHRC are as follows:

- universities, especially for research on the human rights caseload and related issues, but also in terms of accessing the expertise of faculty in the university on matters related to human rights. Universities can also provide facilities for programs in public education, and access to students.

- Schools, especially for the purpose of educating students about diversity, tolerance and human rights. This was seen as a very important part of the Commission's work, something that, if done effectively, could lead to a reduction in complaints coming to the Commission. It was suggested that the human rights days that the NSHRC used to sponsor in the schools might be revitalized.

- Other human rights commissions in Canada, including the Canadian Human Rights Commission, on the grounds that commissions have much to learn from each other since each has innovated in particular areas of their mandates.

The point was also made during the hearings that Nova Scotia lacks a human rights advocacy organization that could press for the protection and advancement of human rights from a vantage point outside of government. An example of such an organization would be the NAACP Legal Defence Fund in the United States, but it was recognized that a Nova Scotia counterpart would need to have a broader mandate.

Should the NSHRC develop partnerships with trained volunteers, particularly in smaller communities, to assist individuals in accessing NSHRC services? There was a mixed

response to this question. Some said it would help improve access and advice to persons in rural areas, but it was recognized that the volunteers would need to be paid or at least that there should be a paid coordinator of volunteer services to organize this work and maintain a stable service. Others are strongly opposed to the volunteer concept on the grounds that people in rural areas are already "volunteering their behinds off". They see it as another aspect of the downloading/retrenchment of government services, and worry about issues of burnout, instability and liability that might result. One volunteer at our hearings said that human rights work is complicated work, and that he would not feel qualified to be engaged in it. In short, for many the sentiment was that you need paid, professional staff.

## *ALTERNATIVE MODELS FOR HUMAN RIGHTS PROTECTION*

The question: In terms of caseload pressures and the need to improve services to the public, are there basic alternatives to the current system for investigating and adjudicating human rights complaints that should be actively considered by the NSHRC?

Three alternatives were suggested in the background documentation for our hearings. They are:

(1) **the Direct Access model in which complaints go directly to a tribunal** and the NSHRC would focus primarily on public education, advocacy and policy development. There was considerable interest in this model in our public hearings. It is attractive to people in part because everybody gets a hearing by a standing tribunal – initially to assess whether there is a valid case to be pursued and subsequently to make a decision in that case. It is also attractive because one has the sense that the process is not as complex as the current process, and a complainant would hear relatively soon about the outcome of the case. If the case can be heard by a panel of several persons, that was seen as desirable for a number of intervenors who believed that the present system of having a tribunal decision come from one person could be unfair and arbitrary.

The Direct Access model could also alleviate some other concerns with the present process. For example, one person described the NSHRC process as paternalistic because the Commission itself takes ownership of the complaint rather than the complainant. It might also lead to better results from race-based cases about which there is some sentiment that these are dismissed far too frequently by the NSHRC under present circumstances. Finally, the point was made that, under a Direct Access model, there might be less pressure on individuals to accept a settlement.

Under the kind of Direct Access model recommended to the Canadian Human

Rights Commission in a recent report[4], it was noted that the NSHRC would continue to assist potential claimants in drafting their complaints and assembling the materials germane to their case. The Commission would also have the right to initiate and advance cases itself such as those that raise an important issue of systemic discrimination.

Those who favoured the Direct Access model recognized, however, that the model definitely requires that persons pursuing complaints would need to have legal representation, either private or legal aid, and that other supports might also be needed such as an advocate for the complainant. This would add to the cost of the system for current legal aid services in the Province are struggling with their existing mandate and would not be able to take on this additional work without a commensurate increase in their funding.

While sentiment was not unanimous, those who favoured the Direct Access model were of the opinion that the tribunal that would hear cases should still be under the umbrella of the NSHRC. It would, however, free up Commission staff to spend more time on other aspects of the Commission's mandate, such as public education. Another view, however, is that the Tribunal should be separate from the Commission and that this would reduce the conflicting roles of the Commission itself – for example, in assisting claimants but also being part of the adjudication process.

Some persons, however, were strongly opposed to a Direct Access model. They argued that it would place human rights cases into a more legalistic, rigid framework, one that might intimidate those bringing forward complaints. Such a process would cut back sharply on the investigatory and other roles of human rights staff, and the opportunity to settle cases informally early on in the process might be lost.

(2) **Legislative and regulatory initiatives to shift the onus for protection of human rights and resolution of complaints to employer and employee groups through internal responsibility mechanisms.** What this option means is that work settings, through the action of employers and employees working together, would develop standards and processes for hearing human rights cases arising in the workplace. Such cases would not go to the human rights commission, at least not in the first instance.

This option was not favoured by most of those who spoke about it during our hearings. One of the principal objections has to do with the perceived imbalance of power that exists in the workplace, raising the question of what happens if the

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[4] The Canadian Human Rights Review Panel, *Promoting Equality: A New Vision*, Ottawa: The Canadian Human Rights Review Panel, 2000

"perp" is the employer or a senior manager. Under those circumstances, who would get fired? How independent can a hearing panel in the workplace be if a decision goes against management, or affects the reputation of the firm? Other concerns had to do with the fact that sometimes the union is the problem, again raising the question about the independence of the process. As one participant put it, this model is driven by the very institution that people complain about.

Typically in the workplace, the persons with the most stake in human rights issues, such as racial minorities or the disabled, make up only a small percentage of the workforce. Thus one of the concerns with this model is the fact that those most affected will not likely play a major role in the process, a process that would in all likelihood be designed and controlled by the employer and by unions that may not have a strong record in the area of human rights. There is also the possibility that the identity of those who complain will become public and they could be subject to harassment in the workplace. We heard of one such incident during the course of our hearings.

We also heard of an internal procedure developed by a major employer that was deemed to contain significant deficiencies -- for example, the lack of provision for an independent external investigator to examine the merits of the case, and the inclusion of a clause that would lead to disciplinary action against an employee if his/her complaint were found to be made in bad faith.

However, we did hear strong representations in favour of this model by persons who had established a process for dealing with employment-related complaints within their workplace, and who believed that it was working well. One of the advantages of the model from a worker's perspective, we were told, is that the process is quite accessible and can probably result in a decision on a case fairly quickly.

Others were of the view that this model could provide at least an initial hearing for a case, and held out the possibility that at least some cases could be settled in this manner even if the NSHRC is still required to serve as the court of last resort[5]. In addition, of course, the NSHRC would still need to deal with cases from smaller employment settings, from those who are unemployed, and from those pursuing non-employment related cases. The NSHRC could work with employers to see that appropriate procedures were put in place, including mechanisms to avoid the shortcomings of this model as described above. The Commission could also use the workplace as a way of reaching large numbers of persons for public education and preventive work.

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[5] The down side of this argument, however, is that some persons have to endure two processes rather than one, before their case is finally completed.

(3) **Processing employment-related complaints through the Labour Standards Tribunal and/or the Labour Relations Board.** We noted above that there is opposition to the idea of pooling resources with these bodies, and this extends as well to the idea of having employment-related human rights cases heard by bodies other than the NSHRC itself. For some, this was seen as amounting to a failure on the part of the NSHRC to enforce the Nova Scotia Human Rights Act and would, therefore, be subject to a court challenge.

It was noted that the mandate of these bodies is quite different from the NSHRC. The Nova Scotia Labour Standards Tribunal, for example, is mostly about providing an appeals process for decisions made under the Nova Scotia Labour Standards Act and protecting non-unionized employees.

Participants in the hearings spoke about the fact that persons involved in labour relations and labour standards do not have the background and expertise that is required in the human rights field. They worried that a labour-management context for the hearing of cases was inappropriate, and that neither labour or management in the province has had a strong record in the human rights field. The Nova Scotia Labour Relations Board, for example, is composed of a management representative, a labour representative and a layperson. Those appointed would not likely bring the same level of expertise, experience and diversity of composition to hearing human rights complaints as would be the case with a tribunal appointed specifically for the purpose by the NSHRC.

These are the three alternative processes that were outlined in the background documentation, but in the discussion other ideas emerged as well. For example, at one location it was suggested that community-based boards be established to give a case an initial review and establish whether it has sufficient merit to proceed. Drawing from Aboriginal culture, a Council of Elders might perform this function, or one might think in terms of a storefront operation.

In another submission, it was recommended that complainants should have the option of proceeding with a civil action in court as an alternative to the NSHRC process. This is currently not possible but the intervenor believed this was a violation of the Charter of Rights as contained in the 1982 Constitution Act.

We also received a written submission that took this idea a few steps further, arguing essentially that Nova Scotia should abandon the model that gives the NSHRC exclusive jurisdiction to hear human rights cases. This submission supports opening up other options, including the courts where persons could sue for remedies. If a small remedy is sought, even small claims court would be appropriate. Alternatively, a group could pursue a class action suit or one based on systemic discrimination through the courts. Other cases could be taken to the Residential Tenancies Board, or to bodies such as the Nova Scotia Labour Standards Tribunal. The point would be not to replace the NSHRC but rather to provide other avenues for hearing and redress, and thereby speed up the

process and reduce the backlog of cases while freeing up the Commission to pursue other aspects of its mandate.

## *EQUITY GROUPS*

The question: What policy changes and specific action steps might be needed to improve the services provided by the NSHRC to groups who have special needs in the areas of human rights and the promotion of equality?

### The Disabled

We have referred in earlier sections to concerns about the adequacy of human rights protection for particular groups among the disabled, such as children with special needs, injured workers, and those with brain injuries.

Members of the Board of the Disabled Persons Commission (DPC) believed they had a largely satisfactory relationship with the Human Rights Commission. They suggested that it would be useful for the DPC to receive periodic statistical reports from the NSHRC on the types of cases involving disability that the NSHRC was dealing with, and trends in the caseload. This would assist the DPC in focusing its activities to address the causes of cases coming before the NSHRC.

We also received a written brief on behalf of injured workers, which supported the idea of an independent, strong human rights commission that would pay more attention to cases brought forward by injured workers. This would help those who alleged discrimination on the part of the Workmen's Compensation Board. At the hearings, we repeatedly reminded by injured workers that they saw the current definition of disability and its implementation, as being discriminatory against them and other groups.

### African Canadians

Perhaps the leading issue raised by members of the African Canadian population was the matter of race-based complaints, and the perception in the community that these kinds of complaints are least likely to succeed. We received a written analysis of this issue which faulted the Commission for not having a full understanding of how racism operates in the present context and for being weak in terms of training of staff and having written guidelines. It was noted that racism is more subtle than it has been in the past, and also has an important systemic element. It was also suggested that the Commission needs to examine the legal requirement of proof that it applies to such complaints.

A second issue of concern to members of the community is the lengthy wait and prolonged process that is required to see a case through from beginning to end. It was mentioned that some persons from the Black community are still too embarrassed to complain and they do not want to be caught up in a long, detailed process. Others spoke

about the stress involved both in the experience of racism as well as the lengthy process of taking action about it. This is another deterrent.

Related to this are issues around accessibility to the Commission. At one level, there is the matter of geography, that persons living in Truro or Amherst, for example, are located a long way away from a NSHRC office. At another level, intervenors raised the issue of the lack of persons of colour working for the Commission and of people not feeling comfortable going to an office with sensitive issues and not having people there from the Black community. The suggestion was made that it might be better to have advocates located in community outreach centres who could advise persons on whether and how to go about laying a complaint.

Women

Representatives of women's organizations also raised the issue of the backlog of cases and the lengthy delay in having cases processed and resolved. The point was made that women make up a large proportion of the backlogged cases, and that action should be taken to resolve this problem.

For women as for other groups, issues of poverty and literacy complicate the process. For example, the complainant may not have a phone and this makes pursuing a case more difficult. A woman who is sexually harassed by an employer cannot wait months or years for her complaint to be resolved in the hope that she can continue to work free from harassment in the same location. Chances are she will need to leave and find another position as soon as possible.

Women have also reported problems when their cases come before a tribunal where they have encountered negative attitudes and insensitive comments from those associated with the tribunal. The suggestion of further training for tribunal members was made.

Aboriginal People

In our meetings with Aboriginal people both on and off reserve, the issue most frequently mentioned is the lack of clarity that exists around the jurisdiction of the Nova Scotia and Canadian Human Rights Commissions. It appears that cases originating on reserve would normally be dealt with by the Canadian Human Rights Commission because "Indians and lands reserved for Indians" are a federal responsibility. However, on at least two occasions, persons who attended our hearings and who in the past have tried to pursue complaints from a reserve base have been told by both the provincial and federal commissions that they were not able to take on the case. While it sounds straightforward that on-reserve cases would go federal, and off reserve cases would go provincial,

complications can easily arise if, for example, an on reserve employer is incorporated provincially, or if a case arises in a field of activity that is carried out under provincial jurisdiction, or if an employer based on reserve also has off reserve locations. We received the strong message that, in the absence of clarification, people living on reserve especially feel unprotected on matters pertaining to human rights.

We were told that the vulnerability of the on-reserve population is increased by the power of the Chief and Council to determine for many families who is employed and who isn't, who gets housing and who doesn't, who qualifies for social assistance and who doesn't, and so on. While discrimination with respect to race is not so likely to arise unless a non-Aboriginal person lays a complaint, discrimination on other grounds – disability, gender, health status – can occur. Furthermore, belonging to a particular family which is "on the outs" politically can also be a factor in decision-making but this is not one of the grounds specified in human rights legislation. We were told that, because of the control exercised by Chief and Council, people living on reserve are afraid to lay a complaint or otherwise challenge that authority. What makes things even more difficult is the lack of written policies, job descriptions, or reasons for decisions, which makes it hard to pursue a complaint.

Both the Nova Scotia and the federal human rights commissions appear to have a low profile. With respect to the NSHRC, it was recommended that the Commission hire First Nations personnel, preferably Mi'kmaq speaking, and that staff make regular visits to the reserves and to off-reserve locations such as the Friendship Centre in order to make the Commission's services and procedures understandable and available to those who need them. As noted above, Mi'kmaq people would also like the NSHRC to be more visible and to speak out more when racist incidents occur, such as in connection to the dispute over the fishery or at sporting events.

We heard some expressions of support for having an external, impartial and arms length human rights agency available to Aboriginal people, and a process that is not subject to the control of Chief and Council. On the other hand, however, we also heard about some reluctance to go with basically non-Aboriginal institutions in order to resolve issues of this kind. There was the suggestion in our hearings that Mi'kmaq people should not complain to outside authorities but should rather establish their own mechanisms for dealing with abuses of power and human rights. If the Mi'kmaq were to do so, it is quite possible that the resulting mechanism would be different than mainstream approaches because Mi'kmaq culture differs so profoundly from the mainstream even after five centuries of sustained contact with non-Aboriginal people. A Mi'kmaq process, for example, might be less oppositional. It might involve an elders' council, or a talking circle, or the opportunity to make restitution, or a greater emphasis on mediation.

Finally, the situation of non-status and off-reserve persons was identified in the hearings – for example, the discriminatory provisions of the Indian Act, and the restricted interpretation that is being placed on the implementation of the Corbiere decision. It was suggested that the mandate of the NSHRC in being able to pursue these kinds of issues

needs to be clarified.

Acadians

At the hearings and subsequently through the submission of a written brief, we were told about problems of "racism" and "internal dissension" affecting Acadians in Nova Scotia. The recommendation was made that the NSHRC needs to be assertive in advancing the cause of human rights through public education and affirmative action in the Province. This is particularly important for Acadians who risk losing their language and culture in a context where they are surrounded by English Canadians. It was also suggested that the NSHRC should speak out more about issues such as the dispute in the fishery involving Aboriginal people, and about the school issue in the Municipality of Clare.

## *CASE MANAGEMENT*

The question: What specific changes could be made to enhance case management? (After posing this question, the background discussion paper then listed a range of possibilities. We will use these ideas to organize the comments we received).

Intake Procedures and the Complaints Process

This is certainly an area that participants in our hearings believed could be improved. The current system is deemed to be too bureaucratic, involving the filling in of forms and then waiting weeks or months to obtain a response. The public that we heard from wants good advice on the appropriate venue for their complaint and a straightforward procedure for filing it.

Once a complaint is submitted, there is also a need to streamline the rest of the process. Some participants at the hearings were shocked to see the diagram of the current process and the many stages and procedures it outlined. It was seen to be far too long and complex a process. As one participant put it, reduce the forms, the bureaucracy and speak the language of the people.

A One-Stop-Shop Approach

There is some support for the idea of having a common, one-stop-shopping process whereby a person with a complaint could contact a central person and obtain advice both on where the complaint should go ( e.g., NSHRC, the Ombudsman's Office, the Labour Standards Tribunal) and how to go about the process. This should be a real person who is well trained. People do not want to call a 1-800 number, and they do not want to use

Access Nova Scotia for this purpose given that some expertise is involved and the complaint is too personal to be dealt with by a clerk over the counter.

In a written submission we received, however, the idea of a common counter for laying complaints was strongly opposed on the grounds that it would violate the idea of having independence from government, it might compromise the confidentiality of human rights complaints, and it would fail to recognize the important distinctions that exist among the various agencies and tribunals.

## Procedures for Dismissing Complaints

We heard a variety of views on the issue of whether the NSHRC should have a process subject to appeal whereby complaints deemed to be frivolous or vexatious could be dismissed, for example by the Executive Director of the Human Rights Commission. Some persons at the hearings spoke in favour of this without reservation, citing for example the amount of time and other resources that complaints take up for employers and others as the requisite documentation is gathered. Others had reservations and would like to see safeguards – for sure, a fair appeals process, and decision should not be made by one person. Most intervenors who spoke to this point were opposed to the idea, citing among other things the experience in Ontario where apparently this mechanism was used to reduce the backlog of cases there and the perception is that this was not a good, fair process for the complainant for whom the case is vital[6].

It was noted that, if the Direct Access model is adopted, there would be no need for the Commission to dismiss complaints. The question of deciding whether a case has sufficient merit to proceed would be handled by the tribunal established under the Direct Access model.

## Alternative Dispute Resolution Mechanisms

Several persons in the hearings spoke in favour of the wider use of alternative dispute resolution mechanisms such as mediation, it being understood that for this approach to be effective, both parties would have to agree to take part. In one presentation, however, we heard the opposite to the effect that the NSHRC had a quasi-constitutional responsibility to deal with cases using its normal process and that it should not contract the fulfillment of its mandate to another party. The additional point was made that there are difficulties with mediation, as well, for example a difficult access procedure, and problems arising because of power inequities between the parties.

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[6] From a legal perspective, it was suggested to us in a written brief that the power to dismiss complaints would lead to a situation of having a right without a remedy – that is, there would be the right to file a complaint but the case never gets heard on its merits by a competent tribunal.

A Time Limit on Making Complaints

This is also an item where there are mixed views, but the preponderance of opinion was against the idea of limiting the time after the incident when a complaint can be filed. The main reason for opposition is the argument that persons may be traumatized by an incident and it takes time for them to recover, to develop the courage to file a complaint, or to realize what has happened to them. Related to this is the argument that in some cases it takes time for a pattern of discriminatory behaviour to develop and become manifest, and this applies both in the case of individual complaints as it does in cases of systemic or institutional discrimination. One person noted that, if a time limit is established, then there should be an option of appeal or a process for considering exceptional cases. Several persons took the view that it is the NSHRC that should work to a time limit (for example, by responding within a week once a complaint is laid), not the person filing the complaint.

Use of Information Technology

This is an area where there is support from the hearings. Participants are of the view that information technology is being, and can be used more widely, to provide information and streamline the processing of complaints. For example, the Commission's Web Site should contain information that would help people decide if they have a legitimate complaint that should go forward. The site could also be used for downloading forms, or for filling them in on-line, as part of the complaint initiation process, as well as providing information about the complaint process. To some extent, the Commission's Web Site already does some of the things suggested.

Strengthening NSHRC's Human Resources

The background document contains some tables which establish that the NSHRC has one of the highest proportion of cases per 100,000 population in the country, but the amount of per capita funding it receives has declined in the period 1980-1997 (check figures). In the public hearings we heard expressions of dismay at this state of affairs, and recommendations to the effect that the number of staff available to the Commission should be increased at least until the backlog of cases is brought under control. The staff that is hired should also help to make the Commission more representative of the communities served.

We also heard that there is a need for the NSHRC Board and staff to receive more education and training than is currently the case, on such issues as systemic discrimination, human rights law, and the handling of race-based complaints.

Other Recommendations for Processing Cases

The following recommendations were also made by one or more of the participants in the hearings:

- It would be useful to have an advocate in the communities who can work with persons with a complaint to explain the process and assist.

- Persons filing complaints should be well represented at all stages of the process, and especially at the tribunal stage where legal representation is important

- There is a need to strengthen human rights legislation in the Province, and also the remedies or penalties that are awarded (e.g., eliminate the non-disclosure provisions)

- The NSHRC needs to do a better job explaining the outcomes of cases to complainants and the workplace

## *TRIBUNALS*

The question: What would be the advantages and disadvantages of having a permanent tribunal instead of ad hoc tribunals?

The preponderance of opinion in our hearings was in favour of establishing a permanent tribunal over the present arrangement of appointing someone from a list of possibilities for each case. A permanent tribunal was favoured because it was thought to increase the prospects that individual cases would actually get a hearing and that cases could be processed more quickly – the argument being that a full-time tribunal would be able to hear a larger number of cases than is presently feasible. It was explained to us that one of the major sources of delay under the present system is that lawyers and others do not actively research a case in its later stages until a tribunal actually sets a hearing date, at which point everyone involved springs into action. It is reasonable to assume, therefore, that having a permanent tribunal would lead to more hearing dates being established and to a more rapid processing of cases.

Other arguments in favour of a full-time tribunal were that members of the panel would develop more expertise in human rights law and its application and that, by having a stable hearing panel of persons, it would lead to more consistent judgements. Of course, those who are concerned about decisions being rendered by one person also favour a permanent tribunal if it means that more than one person hears each case. If a permanent tribunal is established, it should be done under the auspices of the NSHRC rather than as a separate entity.

There were some cautions expressed. For example, permanent tribunals are being

considered or have been established in provinces such as British Columbia, Alberta and Ontario, and those are larger provinces with a large number of cases to be processed. In Nova Scotia, on the other hand, only 17 cases went before a Board of Inquiry in 1998-99, but presumably that is because a large number of other cases are stuck in the system at earlier stages. Under a more streamlined system, or under the Direct Access model discussed above, there would likely be a higher number of cases that would actually reach the tribunal in a given year. Another approach might be to have a permanent tribunal for the Maritime Provinces.

Having a permanent tribunal raises the issue of the composition of the panel and how members will be selected. Intervenors at the hearings pointed out the importance of a high level of qualifications of members, and also the importance of diversity so that communities affected by violations of human rights are reflected in the composition of the hearing panel. It is not necessary that all members have legal training. They should be chosen through a non-political process. For example, a community-based Advisory Committee might put forward a slate of names from which the members are selected by government. Favourable reference was made to the manner in which Ontario makes its judicial appointments.

Finally, there was some expression of concern about whether a permanent tribunal would be more costly than the present arrangement. And one intervenor recommended that there be two permanent tribunals, one for rural and another for urban areas.

## *CONCLUSION*

This concludes the presentation of results from the public hearings. In general, we heard many expressions of support for the NSHRC and for the important work it is doing, and needs to continue to do, in defense of human rights in the Province. While some of the issues we raised for consideration were regarded as being rather technical, such as the manner if which cases might be processed, nevertheless people gave their opinions in a constructive manner. They appreciated having the opportunity to participate in this organizational review, and wanted to be informed both about what comes out of the hearings as well as what actions the Commission and the Provincial Government will take to address the issues before them.

## APPENDIX A

**NSHRC Workshop Consultation Sessions**

| Community | Date | Time | Location |
|---|---|---|---|
| Antigonish | April 23 | 1:30 – 4:00pm | St. Ninian's Place, 120 St. Ninian St., Antigonish |
| Sydney | April 24 | 1:30 – 4:00pm | NSCC Marconi Campus |
| Eskasoni | April 25 | 9:30am - 12noon | Cultural Centre (Eskasoni High School), Eskasoni |
| Baddeck | April 25 | 1:30 – 4:00pm | Bell Museum, 559 Chebucto St., Baddeck |
| Kentville | May 2 | 1:30 – 4:00pm | NSCC Kingstec Campus |
| Digby | May 3 | 1:30 – 4:00pm | Digby Legion |
| Yarmouth | May 4 | 1:30 – 4:00pm | NSCC Burridge Campus |
| Bridgewater | May 7 | 1:30 – 4:00pm | NSCC Lunenburg Campus |
| Amherst | May 8 | 1:30 – 4:00pm | Amherst Fire Hall, 62 Albion St., Amherst |
| Indian Brook | May 9 | 9:30am - 12noon | Shubenacadie First Nation (Indian Brook) Band Council Building |
| Halifax/ Dartmouth | May 17 | 1:30 – 4:00pm | NSCC Institute of Technology Campus, 5685 Leeds St., Halifax |
| Truro | May 22 | 1:30 – 4:00pm | NSCC Truro Campus |

**NSHRC Public Consultation Sessions**

| Community | Date | Time | Location |
|---|---|---|---|
| Antigonish | April 23 | 7:00pm – 9:00pm | St. Ninian's Place, 120 St. Ninian St., Antigonish |
| Sydney | April 24 | 7:00pm – 9:00pm | NSCC Marconi Campus |
| Baddeck | April 25 | 7:00pm – 9:00pm | Bell Museum, 559 Chebucto St., Baddeck |
| Kentville | May 2 | 7:00pm – 9:00pm | NSCC Kingstec Campus |
| Digby | May 3 | 7:00pm – 9:00pm | Digby Legion |
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| Amherst | May 8 | 7:00pm – 9:00pm | Amherst Fire Hall, 62 Albion St., Amherst |
| Halifax/Dartmouth | May 17 | 7:00pm – 9:00pm | NSCC Institute of Technology Campus, 5685 Leeds St., Halifax |
| Truro | May 22 | 7:00pm – 9:00pm | NSCC Truro Campus |

**APPENDIX B**

**Questions to be Addressed through Public Consultation**

1. What should be the core mandate of the NSHRC and how should it allocate resources and priority activities among its various responsibilities, including:

   - Research and policy development;
   - Public education and affirmative action;
   - Investigations and management of complaints;
   - Adjudication of complaints?

2. Does the NSHRC's mandate for action on issues of systemic discrimination need to be clarified or expanded?

3. Does Nova Scotia need a lead agency for human rights research and policy development, and if so should it be the NSHRC?

4. What might be the costs and benefits of pooling resources and aligning the activities of the various agencies that handle citizen's rights related complaints and appeals in Nova Scotia, including the NSHRC, the Ombudsman Office, the Labor Relations Board and the Labor Standards Tribunal?

5. What might be the potential positive and negative impacts of pooling resources and aligning the activities of various agencies, boards and commissions that do public education, research and advocacy in the fields of equality and human rights?

6. What is the scope for building more effective partnerships with other provincial and federal human rights agencies, universities, the school system and community groups, to advance the mandate of the NSHRC?

7. Are there alternative models for the handling of human rights complaints that need to be considered in Nova Scotia to reduce caseload pressures and improve service to the public?

8. What policy changes and specific action steps might be needed to improve services to groups who have special needs in the areas of human rights and the promotion of equality such as First Nations, Blacks, Women, Persons with Disabilities and other groups covered by the Nova Scotia Human Rights Act?

9. What would be the advantages and disadvantages of having a permanent tribunal instead of ad hoc tribunals?